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McDERMOTT, WILL & EMERY

January 22, 1998

VIA MESSENGER

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentation; In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; FCC Dockets 96-98 and 97-151

Dear Ms. Salas:

This is to notify the Office of the Secretary that my partner, Thomas P. Steindler, and I made oral *ex parte* presentations today in the above-mentioned rulemakings to Kyle D. Dixon (Office of Commissioner Michael Powell), Rick Chessen (Office of Commissioner Gloria Tristani) and Anita Wallgren (Office of Commissioner Susan Ness). We represent a coalition of electric utilities, including American Electric Power Service Corporation, Commonwealth Edison Company, Duke Power Company, Florida Power and Light Company, Northern States Power Company and Southern Company, who have participated in this proceeding. A copy of their Legal Memorandum dated June 16, 1997, and some recent press articles are attached. An original and four copies of this notice are being filed with the Secretary's office.

Cordially yours,

Christine M. Gill /ga

Christine M. Gill

Enclosures
cc: Kyle D. Dixon
Rick Chessen
Anita Wallgren

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

To: The Commission

LEGAL MEMORANDUM OF AMERICAN ELECTRIC POWER SERVICE CORPORATION, COMMONWEALTH EDISON COMPANY, DUKE POWER COMPANY, FLORIDA POWER & LIGHT COMPANY, NORTHERN STATES POWER COMPANY AND THE SOUTHERN COMPANY REGARDING APPLICATION OF POLE ATTACHMENTS ACT TO WIRELESS EQUIPMENT

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Dated: June 16, 1997

TABLE OF CONTENTS

SUMMARY

The Pole Attachments Act of 1978, as amended by the Telecommunications Act of 1996, was intended to address Congress' concern that cable television companies and wireline telecommunications providers both have access to utility facilities which Congress perceived as essential to deployment of wire-based technology. Utility infrastructure is not a "bottleneck" facility in any sense for wireless service providers, who can site their equipment on buildings, communications towers and other tall structures. The purpose of the Act does not come into play in the case of wireless service providers.

The language and legislative history of the Act demonstrate that the amendments contained in Section 703 of the Telecommunications Act of 1996 extend regulated rate coverage only to wireline attachments by telecommunications carriers. The 1996 legislation takes into account that cable companies were moving into telecommunications services, and were entitled to a regulated rate for attachments on utility distribution facilities for such services. The 1996 Act extends regulated rate coverage to telecommunications carriers, in order to put them on an even footing with cable companies providing comparable telecommunications services.

Wireless telecommunications was simply not considered by Congress in amending the Pole Attachments Act. There is no mention of wireless in any iteration of the statute or its

legislative history. The jurisdictional grant to the FCC to regulate pole attachments, contained in the definition of "utility," is strictly circumscribed to arrangements affecting the wireline communications space on utility infrastructure. The existing rate formula, Section 224(d), which applies to telecommunications carriers until a new rate formula is established in 2001, is defined in terms of "usable space" which in turn is defined in terms of "wires, cables and associated equipment." Attachments by telecommunications carriers clearly are limited to wireline facilities.

Sound policy reasons support the conclusion that the Pole Attachments Act is limited to wireline facilities. Because of the universal understanding that pole attachments are limited to wireline facilities, the build-out of wireless systems to date (cellular, paging, PCS, SMR, etc.) has occurred without the benefit of a regulated rate. A ruling that regulated rates also apply to wireless equipment would bestow upon new entrants in the wireless field an economic advantage not enjoyed by incumbent wireless carriers, thus creating a non-level playing field between incumbents and new entrants in wireless services. Such a ruling would also mean that only utility companies would be subject to "rent control" for leasing sites to wireless providers, while other landlords would be entitled to market rates.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

To: The Commission

LEGAL MEMORANDUM OF AMERICAN ELECTRIC POWER SERVICE CORPORATION, COMMONWEALTH EDISON COMPANY, DUKE POWER COMPANY, FLORIDA POWER & LIGHT COMPANY, NORTHERN STATES POWER COMPANY AND THE SOUTHERN COMPANY REGARDING APPLICATION OF POLE ATTACHMENTS ACT TO WIRELESS EQUIPMENT

American Electric Power Service Corporation, Commonwealth Edison Company, Duke Power Company, Florida Power & Light Company, Northern States Power Company and The Southern Company, (collectively referred to as the "Electric Utilities"), through their undersigned counsel, submit this legal memorandum regarding application of Pole Attachments Act to wireless equipment in connection with the Commission's reconsideration of the First Report and Order, CC Docket No. 96-98, released August 8, 1996

(hereinafter "First Report and Order").[1/] This issue was raised in the Electric Utilities' Petition for Reconsideration of the First Report and Order filed on September 30, 1996. Specifically, the Electric Utilities argue herein that the Pole Attachments Act of 1978 ("1978 Act"), as amended by Section 703 of the Telecommunications Act of 1996 ("1996 Act"), is limited to attachments of wire facilities only and does not extend to attachments of wireless telecommunications equipment.

ARGUMENT

I. The Historical Context And Legislative History Of The Pole Attachments Act, As Amended, Demonstrates That Congress Intended To Regulate Only The Attachment Of Wire Facilities

In 1978, Congress passed the Pole Attachments Act to protect cable television companies from alleged anticompetitive activities by utilities, who, Congress believed, were exercising monopoly power over their "bottleneck" distribution infrastructure by charging excessive pole attachment rates. FCC v. Florida Power Corp., 480 U.S. 245, 247 (1987); Texas Utilities Elec. Co. v. FCC, 997 F.2d 925 (D.C. Cir. 1993). The Senate Report accompanying the legislation explained that "owing to a variety of factors, including environmental or zoning restrictions and the costs of erecting separate CATV poles or

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1/ First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (released Aug. 8, 1996), 61 Fed. Reg. 45,476 (Aug. 29, 1996).

entrenching CATV cables underground, there is often no practical alternative to a CATV system operator except to utilize available space on existing [utility] poles." Texas Utilities Elec. Co. v. FCC, supra, 997 F.2d at 932, quoting S. Rep. No. 580, 95th Cong., 2d Sess. at 15, reprinted in 1978 U.S.C.C.A.N. 109, 123.

The statute enacted by Congress in 1978 clearly was intended to apply only to attachments of wire facilities. This reading of the 1978 statute has been universally accepted, by the utilities, by the telephone companies, by wireless providers, and by the Commission, and was not challenged by any party during the two decades of its operation.

The scope of Section 224 was addressed, however, in the late 1980's when cable companies began to enter the business of providing telecommunications services other than conventional cable television services, such as data transmission, along the same wireline pathways used to provide CATV. Utility companies sought to impose a separate, non-regulated charge on cable companies for attachments of fiber optic cables to provide non-video telecommunications services, while continuing to charge the regulated rate for traditional cable television services. The cable companies resisted the additional charge for the attachment of fiber cables for telecommunications services, arguing that both wire facilities for traditional video services and other telecommunications services should be afforded a regulated rate under Section 224.

In the context of a pole attachment complaint proceeding, the FCC agreed with the cable industry, holding that Section 224 empowers the Commission to regulate cable industry pole attachments both for traditional cable televisions services and for other telecommunications services. In the Matter of Heritage Cablevision Associates of Dallas, L.P. v. Texas Utilities Electric Company, PA 89-002, 6 FCC Rcd 7099 (1991).

In June, 1993, five months before the introduction of the first version of what was to become the Telecommunications Act of 1996, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's decision. Texas Utilities Elec. Co. v. FCC, 997 F.2d 925 (1993). The Court held that the FCC's determination that it has jurisdiction under Section 224 to regulate attachments for both conventional video entertainment and non-video telecommunications services delivered over cables attached to utility poles was a reasonable interpretation of the Pole Attachments Act and its legislative history. Id.

It is important to bear in mind that both the traditional video services and the non-video telecommunications services at issue in the Texas Utilities case were wireline services, delivered over the cable company's existing distribution system on utility infrastructure. Indeed, the expressed intention of cable companies to move aggressively into the telecommunications business (and the telephone companies reciprocal intention to move into the cable business) was one of the moving forces behind

the telecommunications legislation eventually passed in 1996.[2/]

The legislative changes to the Pole Attachments Act that eventually became Section 703 of the Telecommunications Act of 1996 were developed against this background of expansion of the cable industry into the provision of telecommunications services. Proposed changes to the Pole Attachments Act were first introduced in the House and Senate telecommunications bills that were considered in 1993-94. H.R. 3636[3/] and S. 1822[4/] both add the phrase "or [a] provider of telecommunications service" to the definition of "pole attachment," 47 U.S.C. § 224(a)(4). As amended, the definition of "pole attachment" from the 1994 Senate bill, S. 1822 (which is identical to the final version passed in 1996) reads as follows:

> The term "pole attachment" means any attachment by a cable television system <u>or provider of telecommunications service</u> to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

S. Rpt. No. 103-367, 103d Cong., 2d Sess. at 134.

The 1994 Senate Report accompanying the legislation explains that the changes to the Pole Attachments Act, including the establishment of a new rate formula for attachments used to

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[2/] "Telephone companies are seeking the right to provide cable service in competition with the cable companies. Similarly, cable companies are seeking the right to provide telephone service." S. Rpt. 104-23, 104th Cong., 1st Sess. at 3 (accompanying S.652).

[3/] H.R. 3636 was introduced on November 11, 1993 and passed by the House of Representatives on June 28, 1994.

[4/] S. 1822 was introduced on February 3, 1994, reported out of the Senate Committee on Commerce, Science, and Transportation on September 14, 1994, but never passed by the full Senate.

provide telecommunications services, are "intended to remedy the anomaly of current law, under which cable systems providing telecommunications services are able to obtain a regulated pole attachment rate under Section 224 of the 1934 Act, while other providers of telecommunications services are unable to obtain a regulated pole attachment rate under Section 224." Id. at 65. The same thought is contained in the Conference Report on the final version of the 1996 Act, which notes that the House amendment "is intended to remedy the inequity of charges for pole attachments among providers of telecommunications services." Conf. Rpt. No. 104-458, 104th Cong., 2d Sess. at 206.

In short, Congress was concerned that cable companies providing telecommunications services not have an undue advantage over their competitors in providing wireline telecommunications service, given that the cable companies were entitled to a regulated rate for the attachment of their fiber optic cables to utilities' distribution infrastructure. In the absence of new legislation, the cable companies' competitors, principally competitive access providers ("CAPs") such as Metropolitan Fiber Systems ("MFS"), would not be entitled to Section 224 coverage for attachments of their fiber optic cable to utility infrastructure. Congress therefore extended cable pole attachment rights to telecommunications providers, to create a level playing field for attachments for wireline telecommunications services.

It would defy common sense to argue that Congress intended to extend pole attachment rights to wireless service providers. The Pole Attachments Act is intended to remedy the alleged exercise of monopoly power by utilities over their distribution infrastructure. FCC v. Florida Power Corp., 480 U.S. 245, 247 (1987). However, utility infrastructure is simply not a "bottleneck" facility for wireless service. Wireless equipment can be mounted on any tall building or structure, such as water towers, standard communications towers, monopoles, billboards, highway light structures, etc. Wireless providers thus have a multitude of options other than utility infrastructure to locate their equipment.[5/] Indeed, utility distribution poles are not typically high enough to be an optimal choice for the placement of most wireless equipment. Accordingly, the underlying purpose of the Pole Attachments Act (to address undue control over a perceived bottleneck), simply does not come into play in the case of siting locations for wireless service providers.

Moreover, only wireline telecommunications service providers would be disadvantaged vis-a-vis cable companies that are providing telecommunications service. Wireline telecommunications service providers are the only entities that

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[5/] In addition, wireless facilities are much less "dense" than wireline facilities. Wireline facilities typically are deployed with 20-30 attachments per mile. Wireless facilities, on the other hand, typically require only one attachment per 1-5 mile radius, depending upon the terrain. Moreover, wireline facilities must be located at the point of delivery of service to each house, which brings utility distribution facilities into play, whereas such location is not required in the case of wireless service.

arguably have a need to attach their fiber optic cable to the same poles, ducts, conduits and rights-of-way as the cable companies. Wireless companies, by contrast, either do not have to attach their equipment to utility infrastructure at all (selecting tall buildings or other tall structures instead), or only require attachment to a limited number of selected poles. As such, a wireless company would not be significantly disadvantaged by having to pay a market rate for the poles it would need to use. The fact that a cable company was entitled to a regulated rate simply would not create a substantial "inequity" vis-a-vis a wireless competitor.

II. The Language And Structure Of The Statute Limits Its Application To Wireline Attachments

The view that Congress intended the Pole Attachments Act to be limited to wireline attachments is supported by an examination of both the language and structure of the statute, as amended by the 1996 Act.

First, there is not a single mention of wireless telecommunications anywhere in any version of the Pole Attachment Act amendments, either as the legislation was introduced in 1993-94 or as later introduced and passed in 1995-96. Neither the House or Senate versions introduced in 1993-94 (H.R. 3636 and S. 1822), nor the House or Senate versions introduced in 1995-96 (H.R. 1555 and S. 652), contain any reference to wireless telecommunications or the attachment of wireless equipment. The House and Senate reports accompanying each of these bills, as

well as the Conference Report on the final legislation, do not mention wireless telecommunications or wireless equipment in connection with pole attachments. Wireless providers simply were not on Congress' mind when it was dealing with pole attachments.

However, Congress did deal with the placement of wireless equipment in the 1996 Act, in Section 704, immediately following the pole attachment amendments in Section 703. Where Congress dealt with wireless providers, the statute clearly identified its subject matter as wireless telecommunications service.

Section 704 deals with "Facilities Siting" for wireless telecommunications service. Section 704(a) is entitled "National Wireless Telecommunications Siting Policy." It addresses local zoning authority to regulate the placement, construction, and modification of personal wireless service facilities. Section 704(c) establishes a national policy of making Federal government "property, rights-of-way, and easements" available on a "fair, reasonable, and nondiscriminatory basis" for the placement of wireless telecommunications equipment. Interestingly, Section 704 does not direct the FCC to impose a regulated rate for placement of wireless equipment on federal property.[6/] When Congress intended to address wireless matters it was capable of doing so explicitly. And it did so in Section 704, not in the pole attachment amendments in Section 703.

[6/] This raises the related question of why Congress would single out only one class of potential antenna site owners (utilities) on which to impose rate regulation.

The proposition that Congress had in mind wireline services, not wireless services, in the pole attachment amendments is further supported by the jurisdictional grant to the Commission contained in the statutory definition of "utility." This grant of jurisdiction, originally made in the 1978 Act, was necessary because the FCC had concluded in 1977 that it had no jurisdiction to regulate pole attachment rental agreements between CATV systems and utilities. California Water & Tel. Co., 64 F.C.C. 2d 753 (1977); see H.R. Rep. No. 721, 95th Cong., 1st Sess. Part 2 at 6 (1977); S. Rep. No. 95-580 at 14, reprinted in 1978 U.S.C.C.A.N. at 122. The 1978 legislation was specifically intended to grant the FCC jurisdiction to regulate such agreements. S. Rep. No. 95-580 at 1, reprinted in 1978 U.S.C.C.A.N. at 109 (purpose of bill is "[t]o establish jurisdiction within the Federal Communications Commission (FCC) to regulate the provision by utilities to cable television systems of space on utility poles, ducts, conduits or other rights-of-way owned or controlled by those utilities").[7/]

Congress established that the FCC's jurisdiction is only triggered where a communications space for wire communications has been established on the utility infrastructure:

> Federal involvement in pole attachments matters will occur only where space on a utility pole has been designated and is actually being used for communications services by wire or cable.

[7/] For ease of reference, S. Report No. 95-580, which accompanied the Senate version of the 1978 Pole Attachments Act, is attached hereto as Exhibit A.

S. Rep. No. 95-580 at 15 (Ex. A) (emphasis added). The Senate Report explains that "if provision has been made for the attachment of wire communications a communications nexus is established sufficient to justify, in a jurisdictional sense, the intervention of the Commission." Id. (emphasis added). The Senate Report admonishes that the "expansion of FCC regulatory authority is strictly circumscribed and extends only so far as is necessary to permit the Commission to involve itself in arrangements affecting the provision of utility pole communications space to CATV systems." Id. (emphasis added).

Congress implemented its jurisdictional grant by including within its definition of "utility" the requirement that a utility's infrastructure is being "used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1). The Commission's jurisdiction thus exists only where a utility has established a "communications space" for wire communications on its poles.[8/] Moreover, as stated in the Senate Report quoted above, the Commission's jurisdiction is "strictly circumscribed" to arrangements affecting this "communications space." S. Rep. No. 95-580 at 15 (Ex. A).

[8/] "As a technical matter, the cables are lashed to an aerial support strand, which in turn is affixed to a single point within the section of the pole designated as 'communications space.'" Texas Utilities Elec. Co. v. FCC, supra, 997 F.2d at 927.

The jurisdictional grant reflected in the definition of utility was unchanged by the 1996 Act.[9/] Thus, while Congress expanded the universe of persons entitled to attach to utility poles to include telecommunications carriers, it did not change Congress' intent that the Commission's jurisdiction be "strictly circumscribed" to arrangements affecting the wireline "communications space" on the poles. The logical extension of this jurisdictional grant is that the entire regulatory scheme is limited to "wire communications."

A further indication that Congress intended Section 224 to be limited to wire facilities is reflected in the regulatory rate formula as amended by the 1996 Act. The amended statute establishes two separate rate formulas to be applied to pole attachments. Existing rate formulas are to be applied to pole attachments used by cable companies solely to provide cable service. A new rate formula, which will become effective in 2001, will be established for pole attachments by telecommunications carriers, absent successful negotiation between the parties. Until the post-2001 rate provisions become effective, attachments by new telecommunications carriers will be governed by Section 224(d). The language of the 1996 Act

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[9/] The 1996 Act defines "utility" as follows:

> The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way <u>used, in whole or in part, for any wire communications</u>.

establishing interim application of the existing rate formula to telecommunications carriers is as follows:

> Until the effective date of the regulations required under subsection (e), this subsection shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.

47 U.S.C. § 224(d)(3) (emphasis added).

Examination of the existing rate formula is instructive in determining what Congress had in mind with respect to pole attachments for telecommunications carriers. That rate formula is set forth in Section 224(d)(1). It provides that a utility is entitled to recover certain costs, up to a maximum of actual costs associated with a percentage of the "total usable space" on the utility's poles. The term "usable space" is defined in Section 224(d)(2) as "the space above the minimum grade level which can be used for the attachment of wires, cables and associated equipment" (emphasis added). This definition is unchanged from the 1978 Act, which, as discussed above, unquestionably is limited to wireline services. The 1996 amendments apply this definition of usable space -- wires, cables and associated equipment -- to the rate formula for pole attachments by telecommunications carriers. For the rate formula of Section 224(d) to have any meaning, therefore, the pole attachment must be a wire facility. There can be no plainer evidence of Congressional intent that pole attachments for telecommunications carriers are limited to wireline facilities.

Advocates of extending Section 224 coverage to wireless equipment rely on the language of the "pole attachments" definition, 47 U.S.C. § 224(a)(4), to make their argument. As amended by the 1996 Act, the pole attachments definition includes "any attachment by a . . . provider of telecommunications service."[10/] Any attachment, the argument goes, means any attachment, and must therefore include attachments of wireless equipment.

While appealing at first blush, this argument fails to account for other aspects of the statutory language, its legislative history, and the purpose of the Act. First, it is relevant to note that the phrase "any attachment" was part of the pole attachments definition as originally enacted in 1978. No one could plausibly argue that the "any attachment" language authorized the attachment of wireless equipment under the 1978 Act. Second, as set out above, the jurisdiction of the FCC, articulated in the definition of "utility," remains unchanged by the 1996 Act and is defined in terms of wire communications. The Commission's jurisdiction thus continues to be "strictly circumscribed" to regulating arrangements governing attachments to utility pole wireline "communications space." S. Rep. No. 580 at 15. Third, the rate formula applicable to providers of telecommunications service under Section 224(d) is articulated in

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[10/] Telecommunications service is elsewhere defined to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). This would include wireless providers.

terms of "usable space," which as noted above is defined as "the space above the minimum grade level which can be used for the attachment of wires, cables and associated equipment." 47 U.S.C. § 224(d)(2). Reading "any attachment" to include wireless equipment would render the entire rate formula scheme set out in Section 224(d) meaningless. Finally, and of most fundamental importance, the Act is intended to address access to what Congress believed to be bottleneck facilities, viz. the distribution poles, ducts, conduit and rights-of-way of utility companies. These types of utility infrastructure are not bottleneck facilities in any sense for wireless equipment. The logic of the Act simply does not apply to wireless equipment. Accordingly, reading "any attachment" to include wireless equipment would do violence to the language of the statute, its legislative history, and its underlying purpose.

III. Limitation Of Regulated Pole Attachments To Wireline Services Is Supported By Important Policy Considerations

a. FCC-mandated "rent control" of certain antenna sites is not the best way to achieve rapid rollout of new wireless services.

Sound policy reasons support the limitation of regulated pole attachments to wireline facilities. Until recently, no one, including wireless providers, read the Pole Attachments Act as covering wireless equipment, since it was clear and universally understood that the Act was limited to wire and cable attachments. Absent any government intervention, electric utilities and wireless companies have been freely entering into

site leasing arrangements. For example, many utilities already have master site lease agreements with PCS companies. These arrangements typically include a variety of utility-owned properties - office building rooftops, communications towers, substations and other real estate assets not included in the Pole Attachments Act. These market arrangements, freely entered into, are mutually beneficial to both parties. Furthermore, it is in an electric utility's best interest to continue to make productive use of all of its assets - including assets useful for antenna siting. Accordingly, these arrangements should continue to flourish. Any FCC-mandated rate regulation of a portion of the electric utility assets useful for antenna siting is more likely to disrupt than foster creative business arrangements between electric utilities and wireless companies. If the market is allowed to work the way it has been thus far, the result will be more siting availability for wireless carriers.[11/]

b. Extending section 224 to wireless equipment would have the market-distorting effect of creating an unlevel playing field between incumbent wireless providers and new entrants.

As a result of the universal understanding that the Act does not cover wireless equipment, all of the substantial build-out of wireless services (cellular, SMR, paging, PCS) that has been accomplished to date has been undertaken without FCC

[11/] Siting problems to date have been largely a result of restrictions imposed by local governments. In January of this year, for example, FCC Chairman Hundt wrote to some 33 municipalities asking for an explanation for various tower and antenna siting restrictions.

mandated rates for attachments to utility poles. If the Commission were now to expand the Pole Attachments Act to cover wireless equipment, this would bestow upon new entrants in the wireless field an economic advantage not enjoyed by incumbent wireless carriers that have already built out their systems. Such action would create an unlevel playing field between incumbent wireless providers and new entrants, presumably an undesirable result from a policy perspective.

A corollary of this negative policy result would be that landlords for wireless equipment sites would be treated unequally in the event Section 224 were extended to wireless equipment. Owners (including federal, state and local governments) of non-utility sites -- buildings, towers, billboards, etc. -- would be entitled to charge a market rate, while only utilities would be subject to an FCC-imposed rate. In effect, utilities would be the only landlords subject to a form of rent control, while every other site owner would be entitled to obtain a market rate. And the disparity is non-trivial: market rates for wireless equipment sites typically run in the range of $1000 to $2000 per month, while regulated pole attachments typically are $6 to $10 per year. There is no conceivable policy justification for such disparate treatment.

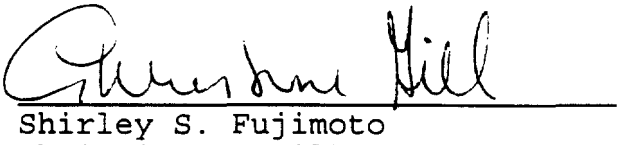
CONCLUSION

The Pole Attachments Act was intended to address the alleged exercise of monopoly power by utilities over their

"bottleneck" distribution infrastructure for wireline telecommunication services. Utility poles are not a "bottleneck" facility for wireless service providers, who site their equipment on buildings and other tall structures. The language and legislative history of the Act demonstrate clearly that Congress intended the 1996 amendments to extend regulated rate coverage to wireline attachments by telecommunications carriers, not attachments of wireless equipment.

WHEREFORE, THE PREMISES CONSIDERED, American Electric Power Service corporation, Commonwealth Edison Company, Duke Power Company, Florida Power & Light Company, Northern States Power Company, and The Southern Company urge the Commission to clarify that only wire facilities are covered by Section 224, and that wireless telecommunications equipment is not subject to a regulated rate.

Respectfully submitted,

By: 

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13TH STORY of Level 1 printed in FULL format.

Communications Daily

September 10, 1997, Wednesday

SECTION: TODAY'S NEWS

LENGTH: 371 words

HEADLINE: **HICKS, MUSE** TO INVEST $1 BILLION IN COMMUNICATIONS TOWER BUSINESS

BODY:

Rapidly growing media conglomerate **Hicks, Muse,** Tate & Furst said it's creating new company to provide communications towers with eventual total value of about $1 billion. Company said it will buy, build and manage towers for digital TV, radio, paging, cellular, PCS, SMR and other communications services, using $100 million of capital to be provided by **Hicks, Muse,** as well as borrowed money.

"We intend to be the leading owner and operator of transmission towers in the country within a short period of time," Chmn. Thomas Hicks said. He said tower industry has "very few major companies" and "offers attractive synergies with our existing holdings in television and radio broadcasting." Company recently vaulted into first ranks among station owners with $1.8-billion investment in stations owned by LIN TV and AT&T (CD Aug 14 p3). It earlier had spent more than $750 million on batch of TV, radio and DBS deals that gave it ownership of or agreements to buy 7 TV stations, Capstar Bcstg., 65 other radio stations. Firm has completed transactions with total capital value of more than $24 billion since it was founded in 1989.

Tower company, to be called OmniAmerica Wireless L.P., will be based in W. Palm Beach. CEO will be Carl Hirsch, who co-founded OmniAmerica Group, which recently sold 8 radio stations to **Hicks, Muse** for $178 million, plus other stations to others valued at about $75 million. OmniAmerica co-founder Anthony Ocepek will be senior vp-COO of OmniAmerica. Both will be investors in new tower firm.

OmniAmerica already has letters of intent to acquire 5 smaller tower companies, it said, but details weren't immediately available. Company plans to acquire portfolio of properties through acquisitions, construction and strategic alliances, it said. Some of new towers are expected to be built on existing sites, others on new sites.

Company plans to benefit from "professionally focused management" of tower properties, it said. Plans include finding ways to generate new revenues from existing towers. Hirsch said **Hicks, Muse** brings to venture "a unique vision of the importance of acquiring assets," as well as "financial and strategic resources."

LANGUAGE: ENGLISH

LOAD-DATE: September 9, 1997

10TH STORY of Level 1 printed in FULL format.

Communications Daily

October 10, 1997, Friday

SECTION: COMM DAILY NOTEBOOK

LENGTH: 261 words

BODY:

In next step, but probably not last, toward becoming "cradle-to-grave" tower company, affiliate of **Hicks, Muse,** Tate & Furst bought 1/3 of Kline Towers, one of largest builders of tall broadcast towers. **Hicks, Muse** recently announced $1-billion plan to become major player in tower business for broadcasting, PCS and other communications uses (CD Sept 10 p2). **Hicks, Muse** affiliate OmniAmerica Wireless paid estimated $10 million for 1/3 of stock in 75-year-old family business held by Kline Towers Pres. Jerry Kline, and received option to become majority owner in future. Kline will remain as pres. and no staff changes are planned. Deal "gives me the best of both worlds," Kline told us. "They give me the financial wherewithal to continue to grow, and I keep control of my company." He noted that **Hicks, Muse** also is likely to be major buyer of towers, so they're "captive market." Firm will "begin to grow immediately," Kline said. Company, which Kline said already has 50% of tall tower business, grew to more than $50 million revenue last year, from $36 million year before, and could quickly reach $100 million annually, he said. Broker Larry Patrick said **Hicks, Muse** was interested because Kline was among "biggest and best" tower builders and has "the ability to increase production dramatically." He said **Hicks, Muse** is expecting "explosive growth" in tower business. It's considered likely to buy at least one more tower company, probably specializing in shorter towers, by end of year, and other purchases are possible.

LANGUAGE: ENGLISH

LOAD-DATE: October 9, 1997